



The Problem of Patenting Tax Strategies

Are you allowed to tell clients about all the tax strategies available to them? It seems ridiculous to think that practitioners might not be able to share information on all available options with their clients. However, a new development may create questions about CPAs' ability to do just that. As Congress examines the issue, the Institute is working to ensure that our profession's voice is heard.

In previous columns, I have often spoken about advocacy efforts made by the AICPA on behalf of the profession and the public interest. One excellent recent example is a letter from the Institute to the House and Senate tax-writing and judiciary committees that highlights the problems with a new development—the patenting of tax strategies—and provides potential solutions. As the letter points out, the Institute believes that “patents for tax strategies undermine the integrity, fairness, and administration of the tax system and are contrary to sound public policy.”

Since 1998, 52 patents for tax strategies have been granted and another 84 patent applications are pending. In the meantime, patent holders have acted to prevent others from using their strategies. In one case, a wealth management company has sued (and now settled with) a taxpayer for allegedly infringing its patent for grantor retained annuity trusts funded by nonqualified stock options. The AICPA and other observers—including members of Congress—have expressed concerns about allowing one person to hold a patent—and charge other taxpayers for—what may be a relatively simple transaction that is based on an interpretation of the Internal Revenue Code. Observers quoted in a *New York Times* article pointed out that allowing the granting of patents would make compliance more costly and could raise the cost of doing business if companies obtain licenses for strategies that would benefit their competitors. In addition, while the granting of a patent may seem to many clients to be a sign of government approval, a *Fortune* magazine article notes that Internal Revenue Service Commissioner Mark Everson has testified before Congress that a patent doesn't guarantee that the strategy involved is necessarily legal.

AICPA Tax Division members and the Institute have been monitoring this issue since its inception. Our most recent efforts culminated in the Institute's letter to Congress, which describes a number of problems with patenting tax strategies, including the fact that they may limit taxpayers' opportunity to take advantage of perfectly valid interpretations of the tax laws. As a result, taxpayers in similar situations may pay more tax than necessary. The specter of tax patents also complicates CPAs' ability to offer appropriate advice to clients.

In its letter, the Institute urges Congress either to restrict the issuance of tax strategy patents or provide taxpayers and tax practitioners with immunity from patent infringement. The Institute does acknowledge that patents may be appropriate for some tax preparation and reporting software. The AICPA forwarded a paper on the subject to Congress and offered to work with lawmakers as they examine this issue.

We understand that this is a concern that will affect many of our members, so we plan to remain vigilant in monitoring new developments and speaking out on behalf of the profession and the public. Detailed information can be found at the AICPA Tax Center at <http://tax.aicpa.org/Resources/Tax+Patents/>.



Let Me Know Your Thoughts

I would like to hear your comments and suggestions on how the AICPA can help enhance your professional life. Don't hesitate to contact me to share your ideas and opinions at jmetzler@aicpa.org.



James C. Metzler
Vice-President—Small Firm Interests
jmetzler@aicpa.org

Did You Know?

The CPA Marketing Tool Kit, a free resource for members, has special updated material for practitioners to use in tax season. The available tools include informational brochures to share with clients and speeches and PowerPoint presentations that CPAs can use to promote their practices. All of these resources are free. They can be found at <http://www.aicpa.org/Professional+Resources/Public+Accounting+Firm+Resources/CPA+Marketing+Toolkit/>.

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